



## RULES

Rules as of August 26, 2004

**810-7-1-.01. Tobacco Tax - Administration and Enforcement of the Provisions of the Alabama Tobacco Tax Act Insofar as It Relates to Damaged Cigarettes and other Damaged Tobacco Products while being Transported or while in the Custody of Warehousemen or Carriers, and Particularly as to How Such Damaged Products are to be Stamped and the Tax Thereon is to be Paid Where They are Sold or How Such Damaged Products Might Otherwise be Disposed of.**

(1) By order of the Commissioner of Revenue on the 24th day of March, 1970, the following tobacco tax rule is effective. In all cases where cigarettes and other tobacco products as are described in Title 40-25-2, as amended, Code of Alabama 1975, are damaged while in the custody of any warehouseman or carrier and such damaged products, or the delivery thereof are refused by the wholesaler or consignee, the warehouseman or carrier, as the case might be, may sell such damaged products without first affixing the required tobacco tax stamps when such sales are made to a licensed wholesaler who has a stamping permit issued by the Department of Revenue under Title 40 - §§40-25-5 and 40-25-1, Code of Alabama 1975. Where such cigarettes and other tobacco products are damaged to such an extent that they are unfit for consumption then they shall be destroyed by the warehouseman or carrier involved, and the destruction of such products shall be accomplished in all such cases in the presence of an examiner or other agent of the State Department of Revenue, who shall make a full report to the Department concerning the same. Otherwise the tax on said products shall be due.

(2) In all other instances, the warehouseman or carrier involved must immediately stamp and pay the tobacco tax on such products.

(3) In cases where such damaged products are sold by the warehouseman or carrier to a licensed wholesaler as above referred to, then the warehouseman or carrier involved must immediately make a full report of same to the State Department of Revenue and shall furnish to the Department copies of all invoices or other records of such sales.

(4) Any violation of the above and foregoing regulation or the laws of this State pertaining to such cases will subject those persons involved to the penalties as are provided by law.

(Statutory Authority §40-25-10)

**810-7-1-.02. Tobacco Tax Refunds Applicable to all Wholesale Dealers of Tobacco Products.**

The following documentation is to be submitted to the Department of Revenue by any wholesale dealer of tobacco products in applying for a tobacco tax refund: (1) The original affidavit from the manufacturer certifying as to the tobacco products received, listing these in detail, and also certifying that the required Alabama stamps were fixed and that the stamps have been destroyed. (2) A copy of the credit memorandum from the manufacturer showing the merchandise returned. (3) A copy of the wholesale dealer's invoice to the manufacturer showing in detail the tobacco products returned and the tax value of these tobacco products.

(Statutory Authority §40-25-10)

**810-7-1-.03. Tobacco Tax Rules Applicable to National Guard Canteens.**

This rule has been adopted by the State Department of Revenue and was promulgated by the Adjutant General with the approval of the Governor and if violated could result in the revocation of the canteen permit, making it necessary for the Department of

Revenue to pick up the tax exemption certificates issued to such canteen.

(a) **Purchases.** All untaxed tobacco products handled by a canteen must be purchased from and delivered by a wholesale tobacco distributor duly qualified with the State Department of Revenue. The delivery by the distributor to the canteen must be made by a common carrier or distributor owned/leased vehicle. An authorized officer or employee of the canteen must issue and cause to be delivered to such wholesaler a purchase order showing in detail the total number of cartons of cigarettes, boxes of cigars, cases of smoking tobacco, etc. included in the purchase. The purchase order form has been mutually approved by both the national guard and the State Department of Revenue and will include a space for the canteen to insert the Alabama tobacco tax exemption certificate number which will be used by the canteen to receipt the distributor for the untaxed tobacco products at the time the distributor makes delivery of same to the canteen. A copy of the purchase order from the canteen must accompany the shipment by the distributor to the canteen. Only those tax exemption certificates issued for the purchase of tobacco products may be used. The original or white copy of the certificate is to be delivered to the wholesaler.

(b) **Sales.** Sales of unstamped tobacco products shall be limited to the quantity covered in the regulations of the Adjutant General.

(c) **Records.** Full and complete records covering each purchase of unstamped tobacco products must be kept by the canteen. The pink copy of the tax exemption certificate which remains in the book must be kept. Full and complete accounting for all sales for unstamped tobacco products must be made. All tax exemption certificates must be accounted for and any certificates mutilated and not used to purchase tobacco products must be marked "void" and sent to the Tobacco Tax Division of the Department of Revenue with the next monthly report. Both the white original and the yellow copy of these voided certificates are to be transmitted. The records of all canteens shall be subject to audit by duly authorized agents of the Department of Revenue at any time.

(d) **Monthly Reports.** All canteens shall be required to file a monthly report on or before the 10th of the following month, whether such canteen made any purchases of unstamped tobacco products or not. This report shall show the date, invoice number, wholesale tobacco distributor, as well as the total number of cartons of cigarettes, boxes of cigars, etc. covered by each purchase. In addition, the State tax value of these tobacco products must be shown on this report as well as the strength of the unit. The report must be accompanied by the yellow duplicate copies of the tax exemption certificates issued to the wholesaler at the time of purchase. The monthly report forms are mailed periodically and additional tax exemption certificates will be furnished upon request as they are needed.

(Statutory Authority §40-25-15(e))

#### **810-7-1-.04. Policy as to Snuff Manufacturers - Merchandise that is to be Destroyed.**

The snuff manufacturer will furnish the Department of Revenue a copy of the packing slip on which is listed in detail by sizes, quantities, etc., all of the snuff to be destroyed, together with a copy of the credit memorandum issued by the manufacturer covering the merchandise, and the affidavit from the representative to the effect that he has actually destroyed this merchandise setting out the value of the stamps affixed, and the Department will refund to the wholesaler the value of the stamps that were affixed to the destroyed merchandise. Procedures and practices by wholesalers which are strictly prohibited by tobacco tax law.

- (a) Borrowing unstamped tobacco from another wholesaler.
- (b) Pick up or exchange of unstamped tobacco from a bonded warehouse or freight terminal.
- (c) Intrastate shipment of unstamped tobacco to another wholesaler.
- (d) Sale, borrowing or lending of State stamps and State administered county stamps.
- (e) Failing to stamp tobacco within 36 hours of receipt.
- (f) Transporting unstamped tobacco to a national guard unit without a completed purchase order.

(g) Delivery within Alabama of tobacco destined for other states. Such products must be delivered by the wholesaler in their vehicle or shipped by common carrier to the out-of-state location.

(Statutory Authority §§40-25-10 & 40-25-15(e))

**810-7-1-.05. Tobacco Administration Concerning Manufacturers and Their Salesmen.**

Salesmen should be informed of the illegality of transferring unstamped tobacco between wholesalers and transporting unstamped products in their automobiles. Manufacturers should be advised against sending unstamped samples to their salesmen by UPS, etc. Gratis cigarettes containing more than 4 cigarettes in a pack must be stamped with the State and applicable County stamps.

(Statutory Authority §40-25-10)

**810-7-1-.06. Gummed Cigarette Rolling Paper Tax.**

(1) In cases where the gummed cigarette rolling papers are furnished by certain manufacturers in the same package with their tobacco product, the wholesale distributors purchasing said products are not liable for the tax on the papers when they are included in a package with a related tobacco product. The inclusion of gummed cigarette rolling papers in a container of tobacco is merely incidental to the sale of tobacco. The gummed cigarette papers are more of a convenience and an inducement to the purchase of the tobacco product.

(2) Under Section 2 of Act 80-700, the tax is levied on gummed cigarette papers sold at wholesale in this State or imported into the State for use, consumption, or sale at retail.

(Statutory Authority §40-25A-16)

**810-7-1-.07. Computing Tobacco Tax on Give-Away Sample Packages of Cigarettes.**

(1) Standard packages of twenty cigarettes should be taxed in accordance with §40-25-2(a)(8), Code of Alabama 1975, at the rate of 6 mills on each such cigarette; and, in addition, under §40-25-60(a)(1), Code of Alabama 1975 (1982 Cumulative Supp.), at the rate of 4¢ per package.

(2) Sample packages containing ten cigarettes or less are taxed under §40-25-2(g), Code of Alabama 1975, at the rate of 6¢ per sample package; and, in addition, under §40-25-60(a)(1), supra, at the rate of 4¢ per package.

(3) Sample packages containing more than ten cigarettes but less than twenty cigarettes are taxed under §40-25-2(g), supra, at the rate of 12¢ per sample package; and, in addition, under §40-25-60(a)(1), supra, at the rate of 4¢ per package.

(Alabama Department of Revenue, Tobacco Tax Section, James M. Bradshaw; adopted October 24, 1983.)

**810-7-1-.08. Procedure for Reporting and Payment of Tobacco Taxes on Tobacco Products Other Than Cigarettes.**

(1) The license or privilege tax specified in Code Section 40-25-2 on all tobacco products other than cigarettes shall be paid on all purchases or receipts by any qualified wholesale distributor or retailer and any other person, firm, corporation, club or association within the State of Alabama when received for the purpose of selling, storing or distributing the tobacco products.

(2) Payment of the tax due, if any, and a report, on a form prescribed by the Department, shall be filed with the Department on or before the twentieth day of each calendar month showing all receipts of tobacco products for the preceding calendar month. A copy of the report shall be maintained by the taxpayer, along with proper documentation which adequately differentiates and substantiates the amount of tax paid and all deductions, exemptions or credits claimed for each reporting period. Failure to receive a report form does not relieve the taxpayer from filing a report on or before the due date.

(3) Payments may be by cash, check, electronic funds transfer (subject to the electronic funds transfer provisions), or any other legal tender.

(4) The full amount of tax due shall be paid to the State Department of Revenue in the manner and time allowed above

without any discount or offset being allowed, except for tobacco products returned to the manufacturer for credit as described herein.

(5) Qualified wholesalers whose tobacco products are returned to the manufacturer or destroyed by the manufacturer's representative due to such products becoming unfit for use or consumption or unsaleable, before or after distribution, shall be allowed a credit on their monthly tax report only in the month in which proper documentation is received from the manufacturer. The following documents are required to substantiate credits: an original affidavit from the manufacturer, credit memorandum and a copy of the qualified wholesaler's invoice to the manufacturer, and such other documentation as the Department of Revenue may require.

(6) Sales exempted from tobacco tax by law are to be excluded from the taxable measure in the month that the sales occur.

(7) Every manufacturer, distributor, and importer shall file with the Department of Revenue a report concerning all sales, releases and deliveries of tobacco products to qualified wholesalers and retailers of this state made or authorized by such manufacturer, distributor or importer during the preceding calendar month. Such manufacturer, distributor or importer shall also file a report each month showing all shipments of tobacco products from a point outside this state into this state during the preceding calendar month.

(a) The report required from manufacturers, distributors or importers shall provide the following information concerning each sale, release or delivery:

1. Name and address of purchaser.
2. Invoice or document number and invoice date.
3. Information pertaining to cancellation of invoices.
4. Gross billing appearing on the invoice.

(b) Each manufacturer, distributor or importer shall file the monthly report with the Department of Revenue by the last day of each calendar month.

(8) The regulations relating to the taxation and reporting for tobacco products other than cigarettes shall pertain to county taxation of tobacco products other than cigarettes with the following exceptions:

(a) The tax prescribed by a county shall be paid on all sales of tobacco products other than cigarettes by any qualified wholesaler or retailer or any other person, firm, corporation, club or association by the twentieth of the next calendar month following the month in which such sales occur.

(b) Any tobacco products returned to the manufacturer as provided in subparagraph (5) above. In addition to the documents enumerated in subparagraph (5), an authentic credit invoice or memorandum initiated by the qualified wholesaler to the purchaser of said products shall be provided.

(Statutory Authority §§ 40-25-2(a), 40-25-2(g), and 40-25-7, et al.) (Effective May 26, 1989; amended effective March 28, 2003)

#### **810-7-1-.09. Procedure for Reporting and Payment of County Tobacco Taxes on Cigarettes.**

(1) The license or privilege tax specified in all legislative acts, heretofore or hereafter enacted, regarding county tobacco taxes on cigarettes, which are to be administered and collected by the State Department of Revenue, shall be paid on all sales by any qualified wholesale distributor or retailer and any other person, firm, corporation, club or association within the State of Alabama, when such sales of cigarettes are made into said counties.

(2) Payment of the tax due, if any, and a report, on a form prescribed by the Department, shall be filed with the Department on or before the twentieth day of each calendar month showing all sales of cigarettes into said counties for the preceding calendar month. A copy of the report shall be maintained by the taxpayer, along with proper documentation which adequately differentiates and substantiates the amount of tax paid and all deductions, exemptions, or credits claimed for each reporting period by county. Failure to receive a report form does not relieve the taxpayer from filing a report on or before the due

date.

(3) Payments may be by cash, check, electronic funds transfer (subject to the electronic funds transfer provisions), or any other legal tender.

(4) The full amount of tax due shall be paid to the State Department of Revenue, in the manner and time allowed above without any discount or offset being allowed, except for tobacco products returned to the manufacturer for credit as described herein.

(5) Qualified wholesalers whose tobacco products are returned to the manufacturer, or destroyed by the manufacturer's representative, due to such products becoming unfit for use or consumption after distribution, shall be allowed a credit on their monthly tax report only in the month in which proper documentation is received from the manufacturer. The following documents are required to substantiate credits: an original affidavit from the manufacturer, a credit memorandum, an authentic credit invoice or memorandum initiated by the qualified wholesaler to the purchaser of said products, and a copy of the qualified wholesaler's invoice to the manufacturer, and such other documentation as the Department of Revenue may require.

(6) Sales exempted from tobacco tax by law are to be excluded from the taxable measure in the month that the sales occur.

(7) Every manufacturer, distributor, and importer shall file with the Department of Revenue a report concerning all sales, releases, and deliveries of tobacco products to qualified wholesalers and retailers of this state made or authorized by such manufacturer, distributor, or importer during the preceding calendar month. Such manufacturer, distributor, or importer shall also file a report each month showing all shipments of tobacco products from a point outside this state into this state during the preceding calendar month.

(a) The report required from manufacturers, distributors or importers shall provide the following information concerning each sale, release, or delivery:

- (1) Name and address of purchaser.
- (2) Invoice or document number and invoice date.
- (3) Information pertaining to cancellation of invoices.
- (4) Gross billing appearing on the invoice.

(b) Each manufacturer, distributor, or importer shall file the monthly report with the Department of Revenue by the last day of each calendar month.

(Statutory Authority §§40-25-1, 40-25-2(a), 40-25-2(g), 40-25-7, et al. Code of Alabama 1975, and applicable County Tobacco Tax Acts) (Effective September 19, 1989; amended effective March 28, 2003)

#### **810-7-1-.10. Procedure Pertaining to the Exemption of Certain Organizations from State Tobacco and Playing Card Taxes.**

(1) With respect to tobacco and playing card taxes which are required by law to be added to the price of the tobacco products and playing cards and which are paid over to the State Department of Revenue by the qualified permitted distributor and not by the consumer, those organizations exempt from such tax under provisions of Article 1, Chapter 9, Title 40, Code of Alabama 1975, shall pay the appropriate tax at the time of purchase and the amount of such tax shall be refunded to such organization on a quarterly basis.

(2) Request for such refund shall be made on forms furnished by the Department of Revenue, properly attested to, and containing such information as the Department may deem necessary. Said information shall include but not be limited to the following:

- (a) Name and address of organization.
- (b) Qualified permit holder from whom product was received.

- (c) Invoice number and invoice date.
- (d) Type and number of each product purchased.
- (e) Amount of tax paid.

(Statutory Authority § 40-9-12) (Effective September 18, 1992)

**810-7-1-.11. Procedures Pertaining to the Tobacco Master Settlement Agreement Concerning Nonparticipating Manufacturers.**

(1) In addition to information currently reported, each qualified wholesaler, distributor, retailer, manufacturer, or any other person, firm, corporation, club or association selling, receiving, distributing, storing or using tobacco products in the State of Alabama shall report the excise tax on cigarettes and roll-your-own tobacco according to the tobacco product manufacturer **not participating** in the "Master Settlement Agreement."

(2) The wholesaler, distributor, retailer, manufacturer, etc. shall report the information to the Alabama Department of Revenue, on forms prescribed by the Department, no later than the twentieth day of each calendar month for the preceding calendar month's activity. The following information must be reported:

(a) The month of activity.

(b) The name of the nonparticipating manufacturer from whom the Alabama taxed cigarettes or roll-your-own tobacco originated.

(c) The number of Alabama taxed cigarettes and roll-your-own tobacco units sold. (Units Sold is the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs (or roll-your-own tobacco containers) bearing the excise tax stamp of the state.)

1. For the purpose of roll-your-own tobacco, this product is taxed under the heading of "smoking tobacco" in Alabama tobacco tax statutes Title 40, Chapter 25, Section 2(a)(9), and the excise tax is paid by monthly report. The term "cigarette" includes roll-your-own tobacco. Roll-your-own is any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. 0.09 ounces of roll-your-own tobacco shall constitute one individual cigarette.

(d) The tax value of cigarettes and roll-your-own tobacco. For the purpose of computing the equivalent tax on roll-your-own tobacco, the tobacco must be converted to individual cigarettes by dividing total ounces of roll-your-own tobacco by 0.09, then multiplying the results by Alabama cigarette tax rate of 8.25 mills (.00825 per individual cigarette).

(3) A manufacturing company whose cigarettes and/or roll-your-own tobacco is distributed into Alabama and that manufacturing company elects not to participate in the Master Settlement Agreement is required to do the following:

(a) Establish an escrow fund in a federally or state chartered financial institution by April 15, 2000. The manufacturer may choose the institution, however, the following conditions must be met:

1. The institution must not be affiliated with any tobacco product manufacturer.

2. The institution must have assets of at least one billion dollars.

3. The escrow arrangement must require that the financial institution hold the escrowed funds' principal for the benefit of **releasing parties** and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal inconsistent with Act 99-395, Section 3 (2).

4. The tobacco products manufacturer may receive the interest or other appreciation on the escrow fund.

(b) Certify to the Commissioner of the Department of Revenue, no later than April 30, 2000 or April 30 following the year of activity, that an escrow fund was established and provide the Commissioner with a copy of the escrow agreement

signed by the tobacco product manufacturer and financial institution.

(c) Place into a qualified escrow fund by April 15 of the year following the below year, the following amounts:

1. 1999: \$.0094241 per unit sold June 9, 1999 through December 31, 1999;
2. 2000: \$.0104712 per unit sold;
3. 2001 and 2002: \$.0136125 per unit sold;
4. 2003 through 2006: \$.0167539 per unit sold;
5. 2007 and each year thereafter: \$.0188482 per unit sold.

(d) Certify to the Commissioner of the Department of Revenue by April 30 of each year stating the number of units sold in Alabama and the amount deposited into the escrow fund. Verification of the deposit must be evidenced by a statement from the financial institution.

(Statutory Authority §§ 40-2A-7(a)(5), Code of Alabama 1975, and Act 99-395, Section 2(10)) (Emergency rule effective September 1, 1999, expires December 29, 1999. Permanent rule filed December 1, 1999, effective January 5, 2000, amended June 30, 2000, effective August 4, 2000)

**810-7-1-.13. Procedures for Taxing Snuff, Moist Snuff (Roll Snuff) and Smokeless Tobacco (Tobacco Similar in Composition to Snuff).**

(1) Effective upon the adoption of this revenue rule, the following terms shall be defined as follows:

(a) The term "smokeless tobacco" refers to any tobacco products not intended to be smoked. For purposes of calculating the state tobacco taxes applicable under Section 40-25-2, Code of Alabama 1975, as well as all county tobacco taxes administered by the Alabama Department of Revenue, all smokeless tobacco shall be classified as either chewing tobacco or snuff.

(b) The term "snuff," means any finely cut, ground, or powdered tobacco that is not intended to be smoked. The term snuff includes "moist snuff" sometimes referred to as "roll snuff" including the long cut and fine cut varieties. Any smokeless tobacco product similar in composition and makeup to snuff shall be taxed at the rates applicable to snuff.

(c) The term "chewing tobacco" means any leaf tobacco that is not intended to be smoked and is not defined as snuff above. It includes both plug and scrap varieties.

(2) The applicable State of Alabama tobacco taxes on snuff are levied by Code of Alabama 1975, Section 40-25-2. The following tax rates are in effect as of the adoption of this rule:

<b><u>Weight</u></b>	<b><u>Tax</u></b>
5/8 ounce or less	1/2¢
Over 5/8 ounce, not exceeding 1-5/8 ounces	1¢
Over 1-5/8 ounces, not exceeding 2-1/2 ounces	2¢
Over 2-1/2 ounces, not exceeding 5 ounces (cans, packages, gullets)	3¢
Over 3 ounces, not exceeding 5 ounces (glasses, tumblers, bottles)	3-1/2¢
Over 5 ounces, not exceeding 6 ounces	4¢
Six cents additional tax for each ounce or fractional part thereof over 6 ounces	

(3) State-administered county tobacco taxes on products classified as snuff shall be calculated according to the snuff tax rates levied by each county Act.

(Statutory Authority §§ 40-2A-7(a)(5) and 40-25-2, Code of Alabama 1975, and applicable County Tobacco Tax Acts.)

**810-7-1-.14. Tobacco Product Manufacturers Certificate of Compliance.**

(1) As used in this rule, the following terms shall have these meanings:

(a) "Brand Family" means all styles of cigarettes sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, menthol, lights, kings, and 100s, and includes any brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(b) "Cigarette" has the same meaning as in Section 6-12-2(4), Code of Alabama 1975.

(c) "Directory" means the listing of all Tobacco Product Manufacturers that have provided current and accurate certifications conforming to the requirements of Title 6, Chapter 12A, Code of Alabama 1975, and all Brand Families that are listed in such certifications; except as provided by Section 6-12A-3(b), Code of Alabama 1975.

(d) "Distributor" is a person, wherever resident or located, who purchases non-tax-paid cigarettes and stores, sells, or otherwise disposes of the cigarettes.

(e) "Master Settlement Agreement" means the settlement agreement, and related documents, entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

(f) "Nonparticipating Manufacturer" means any Tobacco Product Manufacturer that is not a Participating Manufacturer.

(g) "Participating Manufacturer" has the meaning given that term in Section II(jj) of the Master Settlement Agreement and all amendments thereto.

(h) "Qualified Escrow Fund" has the same meaning as in Section 6-12-2(6), Code of Alabama 1975.

(i) "Tobacco Product Manufacturer" has the same meaning as in Section 6-12-2(9), Code of Alabama 1975.

(j) "Units Sold" has the same meaning as in Section 6-12-2(10), Code of Alabama 1975.

(k) "Wholesaler" means a person, firm, corporation, club, or association that is authorized to affix tax stamps to packages or other containers of cigarettes under the provisions of Title 40, Chapter 25, Code of Alabama 1975.

(2) Any tobacco product manufacturer that sells or intends to sell cigarettes within the state of Alabama, whether directly or through any distributor, retailer, or similar intermediary must file a Tobacco Product Manufacturers Certificate (TPM Certificate) on the forms prescribed, with the Department of Revenue. This TPM Certificate is in addition to any Certificate of Compliance that may be required of Nonparticipating Tobacco Product Manufacturers pursuant to Title 6, Chapter 12, Code of Alabama 1975.

(3) In 2003 only, the TPM Certificate must be received on or before September 15, 2003. In future years, the TPM Certificate must be received on or before April 30th for the previous sales year.

(4) On the TPM Certificate, the Manufacturer's identification must include the name, address, telephone number, fax number and electronic mail address. The Manufacturer must also identify the sales year, identify by Brands and/or Brand Families all of the cigarettes that the Tobacco Product Manufacturer intends to sell in this State whether directly or through any distributor, retailer, or similar intermediary, and seeks to have included in the Directory. Only the brands identified may be included in the Directory.

(5) A Participating Manufacturer shall include a list of its Brand Families on the TPM Certificate. The Participating Manufacturer shall update such list thirty calendar days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental certification to the Department.

(6) A Nonparticipating Manufacturer shall include in its TPM Certificate:

(i) a list of all of its Brand Families and the number of Units Sold for each Brand Family that were sold in the State during the preceding calendar year, (ii) a list of all of its Brand Families that have been sold in the State at any time during the current



calendar year, (iii) indicating, by an asterisk, any Brand Family sold in the State during the preceding calendar year that is no longer being sold in the State as of the date of such certification, and (iv) identifying by name and address any other manufacturer of such Brand Families in the preceding or current calendar year. The Nonparticipating Manufacturer shall update such list thirty calendar days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental certification to the Department.

(7) The Nonparticipating Manufacturer must verify that it is registered to do business in Alabama or has appointed an agent for service of process and provided notice thereof as required by Title 6, Chapter 12A, Code of Alabama 1975. Identify (i) the name, address and telephone number of the financial institution where the Nonparticipating Manufacturer has established a Qualified Escrow Fund pursuant to Title 6, Chapter 12, Code of Alabama 1975 and all regulations promulgated thereto; (ii) the account number of such Qualified Escrow Fund and any sub-account number for Alabama; and identify (i) the amount such Nonparticipating Manufacturer placed in such fund for Cigarettes sold in the State during the preceding calendar year, the date and amount of each such deposit; and (ii) the amount and date of any withdrawal or transfer of funds the Nonparticipating Manufacturer made at any time from such fund or from any other Qualified Escrow Fund.

(8) The person executing the TPM Certificate must be an authorized representative for the Tobacco Product Manufacturer. The authorized representative's name and title must be printed and the TPM Certificate must be executed in the presence of an authorized notary.

(9) On or about October 31, 2003, the Department of Revenue will release a Directory of those tobacco product manufacturers that are fully compliant with Alabama statutes. The Directory will set forth the names of the compliant tobacco product manufacturers, together with the names of those brands and/or brand families of the respective manufacturers that have been certified by the Department as being fully compliant with Alabama law. Updates to the directory will be made as necessary to correct mistakes and to add or remove a tobacco product manufacturer or brand families to keep the Directory in conformity with its requirements. The Directory will be distributed to licensed stamping agents and will be made available to those stamping agents and the general public on an ongoing basis on the Department's website. Only those brands and brand families listed in the Directory will be permitted to be stamped for sale, offered for sale, possessed for sale or sold in the State of Alabama. Brands or brand families not listed in the Directory are contraband and subject to seizure by any law enforcement officer.

(10) Any Nonparticipating Tobacco Manufacturer that has not complied with Alabama Statutes by submitting its escrow payments and Certificates of Compliance will not be listed in the Directory until all past escrow payments are made, proof of payment is submitted to the State, all outstanding judgments are satisfied, and all other obligations are met.

(Statutory Authority §§ 40-2A-7(a)(5) and 6-12A-7, Code of Alabama 1975, effective September 17, 2004.)

#### **810-7-1-15. Directory of Cigarettes Approved For Stamping and Sale in Alabama.**

(1) In accordance with the provisions of the Tobacco Master Settlement Complementary Legislation Act, the Commissioner shall compile and make available for public inspection a directory listing all tobacco product manufacturers that have provided current and accurate certifications and all brand families that are listed in the certifications.

(2) The Commissioner shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that fails or has failed to provide the required certification or whose certification the Commissioner determines is not in compliance with Section 6-12A-3(a)(2) and (3), Code of Alabama 1975.

(3) The Commissioner may request any additional information deemed necessary to establish to his satisfaction that the manufacturer is in compliance with all applicable federal statutes.

(4) Neither a tobacco product manufacturer nor a brand family shall be included or retained in the directory if the Commissioner concludes either of the following:

(a) Any escrow payment required pursuant to Section 6-12-3, Code of Alabama 1975, for any period for any brand family, whether or not listed by the non-participating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Commissioner.

(b) Any outstanding final judgment, including interest thereon, for a violation of Section 6-12-3, Code of Alabama 1975, has not been fully satisfied for the brand family or the manufacturer.

(c) Failure to submit additional information requested by the Commissioner to ensure the manufacturer is in

compliance with Title 6, Chapter 12A, or with federal statutes.

(5) The Commissioner shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of Title 6, Chapter 12A.

(6) The Commissioner shall transmit by E-mail or other practicable means to each wholesaler, stamping agent or distributor notice of any addition to or removal from the directory of any tobacco product manufacturer or brand family. The wholesaler, stamping agent, or distributor shall have 30 days from receipt of notice from the Department regarding the change in the directory to sell the brand family that is delisted. No delisted brand family may be sold after the 30 day period.

(7) The burden of proof shall be on the tobacco product manufacturer to establish that it or a particular brand family is entitled to be listed in the directory.

(Statutory Authority §§ 40-2A-7(a)(5), 6-12A-3 and 6-12A-7(d), Code of Alabama 1975, effective September 17, 2004.)

#### **810-7-1-16. Updates and Changes to the Directory of Cigarettes Approved for Stamping and Sale and Appeals Therefrom.**

(1) Upon a determination that a manufacturer or brand family should not be listed in or removed from the Directory of Cigarettes Approved for Stamping and Sale, the manufacturer who requested its brand(s) to be listed in the directory will be so notified. The notice will be sent via U.S. mail and will list the specific violations, omissions, or other reasons for the determination not to list or to remove the manufacturer or brand family.

(2) Each wholesaler, stamping agent or other distributor which is permitted or registered with the Department shall be sent notice of any addition to or removal from the directory, in accordance with Section 6-12A-3(b)(3), Code of Alabama 1975. Those wholesalers, stamping agents, or other distributors having provided a valid electronic mail address in accordance with Section 6-12A-3(b)(4), Code of Alabama 1975, shall be sent notices via electronic mail. Those wholesalers, stamping agents, or other distributors for whom no electronic mail addresses are on file will be sent notices via U.S. mail. The Department will also post any pending additions to or deletions from the directory on its website.

(3) Tobacco product brand families which are facing impending deletion from the directory may continue to be sold until the date stated in the notice to wholesalers, stamping agents and other distributors discussed in paragraph (2), above, of this rule, which shall be no less than thirty days from the date of distribution of the notice. After the expiration of thirty days from the date of distribution of the notice, an affected tobacco product manufacturer and/or brand family will be removed from the directory. No such delisted tobacco brand family may be sold after this thirty-day period, regardless of whether any particular tobacco wholesaler, stamping agent, or other distributor has a valid electronic mail address on file. Neither the refusal or other failure of the wholesaler, stamping agent or other distributor to furnish a valid electronic mail address as required by Section 6-12A-3(b)(4), Code of Alabama 1975, nor the delayed receipt of notices sent by alternate means, will extend the period for sale of a delisted brand family.

(4) If a manufacturer disagrees with a determination issued by the Department, the manufacturer may file a written petition for review with the Department in accordance with Section 6-12A-7(a), Code of Alabama 1975, within thirty (30) days from the date of the determination.

(a) For purposes of this regulation, the term "written petition for review" shall mean any written response to a determination. The petition should include the following:

1. a statement that the manufacturer wants a review of the determination,
2. specific objections to the determination,
3. the manufacturer's name and address,
4. a copy of the determination letter
5. a statement of facts supporting the manufacturer's position regarding any factual issue, and
6. a statement outlining the law or authority relied upon.

(b) If a petition for review is timely filed, the Department shall, upon written request of the manufacturer or if the

Department otherwise deems it necessary, schedule a conference with the manufacturer for the purpose of allowing the manufacturer and the Department to present their respective positions, discuss any omissions or errors, and attempt to reach an agreement. The manufacturer will be notified by first class U.S. mail of the conference date. All notices shall include the conference time, the address where the conference is to be held and, if the conference is not at the request of the manufacturer, the items in dispute which will be discussed during the conference.

(5) Upon review of the manufacturer's petition, the determination to exclude or remove a manufacturer or brand family from the directory may be rescinded provided the specific violations, omissions, or other reasons for the determination not to list or to remove the manufacturer or brand family have been cured. If notice of the determination as described in paragraph (2), above, of this rule, has been provided to wholesalers, stamping agents, or other distributors, then notice of the rescission will be provided in a like manner.

(6) If a requested review of a manufacturer's petition has not occurred prior to the last sales date stated in the notice to wholesalers, stamping agents and other distributors, the determination to exclude or remove a manufacturer or brand family will not be rescinded, and no further sales of a delisted brand family may be made after the stated date.

(7) If a review of a petition is completed after the last sales date stated in the notice to wholesalers, stamping agents and other distributors and the specific violations, omissions, or other reasons for the determination not to list or to remove the manufacturer or brand family are determined to be cured, the affected manufacturer or brand family will be returned to the directory, and wholesalers, stamping agents, or other distributors will be notified of the date when sales of the previously delisted brand family may be resumed.

(8) If after review of a petition, a final determination is made to exclude or remove a manufacturer or brand family, the manufacturer will be so notified along with the specific violations or omissions, which remain uncured. The manufacturers shall have the right to appeal the Final Determination to the Department's Administrative Law Division.

(Statutory Authority §§ 40-2A-7(a)(5) and 6-12A-7, Code of Alabama 1975, effective September 17, 2004.)

#### **810-7-1-.17. Quarterly Certifications and Escrow Deposits.**

(1) To promote compliance with Title 6, Chapter 12A, the Commissioner may require nonparticipating manufacturers to certify their compliance quarterly with the Alabama tobacco master settlement agreement act. The Commissioner may also require nonparticipating manufacturers to make the escrow payments required by Section 6-12-3, Code of Alabama 1975, at quarterly intervals during the year in which the sales covered by such payments are made. This rule applies to nonparticipating manufacturers who meet any of the following criteria:

(a) **No Previous Escrow Deposit.** Nonparticipating manufacturers that have not previously established and funded a qualified escrow fund in Alabama.

(b) **No Escrow Deposit for More Than One Year.** Nonparticipating manufacturers that have not made any escrow deposits for more than one (1) year.

(c) **Untimely or Incomplete Deposits.** Nonparticipating manufacturers that have failed to make a timely and complete escrow deposit for any prior calendar year.

(d) **Outstanding Judgments.** Nonparticipating manufacturers that have failed to pay any judgment, including any civil penalty.

(e) **Large Sales Volume.** Nonparticipating manufacturers that have more than 1,600,000 of their cigarettes sold during a quarter.

(f) **Other Reasonable Cause.** In addition to the reasons specified above, the Commissioner may require quarterly escrow deposits from a nonparticipating manufacturer if the Commissioner has reasonable cause to believe the nonparticipating manufacturer may not make its full required escrow deposit by April 15 of the year following the year in which the cigarette sales were made.

(2) Nonparticipating manufacturers, who are required to make quarterly escrow deposits, must provide the Commissioner with bank verification of the quarterly escrow deposit no later than ten (10) days after each quarterly deposit date. Nonparticipating manufacturers must also provide their quarterly certifications of sales activity and required deposits within the

same deadline. For example, the deadline for certifying and providing bank verification to the Commissioner of a quarterly escrow deposit for sales of cigarettes that occurred in February is May 10 of the same year.

(3) For purposes of this rule, the calendar year shall be divided into the following quarters: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31. The quarterly deposit date shall be the last day of the month following the end of the quarter.

(4) If the required quarterly escrow deposit is not timely made in full, or the required quarterly certification is not provided to the Commissioner, or the Commissioner does not receive timely bank verification of the quarterly escrow deposit, the delinquent nonparticipating manufacturer and its brand families may be removed from the directory.

(Statutory Authority §§ 40-2A-7(a)(5), 6-12A-3 and 6-12A-7(d), Code of Alabama 1975, effective September 17, 2004.)

#### **810-7-1-.18. Disclosures of Information.**

(1) Section 6-12A-5(a), Code of Alabama 1975, requires all tobacco wholesalers and distributors to file, no later than 20 days after the end of the month, all information as required by the Commissioner to facilitate compliance with Title 6, Chapter 12A, which includes, but is not limited to a list by brand family of the total number of cigarettes or in the case of roll your own, the equivalent stick count for which the wholesalers and distributors affixed stamps during the previous month or otherwise paid the tax due for any cigarettes. The wholesaler or distributor shall maintain, and make available to the Commissioner, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Commissioner for a period of five years.

(2) This information shall be reported on form TOB:SCH D, otherwise known as Schedule D, to the Department. The Department will compile the information reported on all the Schedule D's as submitted by the wholesalers and distributors. The compilation by manufacturer will be compared to the certification and escrow deposit filed as required quarterly or annually by the manufacturer. If the required quarterly or annual escrow deposit is not timely made in full, or an incomplete certificate is filed, the nonparticipating manufacturer and its brand families may be removed from the Directory.

(3) In the event the manufacturer does not agree with the Schedule D compilation, he/she may request in writing to the Department to determine the sales of each of the manufacturer's brands as reported by individual wholesaler(s) and/or distributor(s). Upon receipt of the written request, the Department is authorized to disclose to the non-participating manufacturer the quarterly or annual compilation by individual wholesaler or distributor.

(Statutory Authority §§ 40-2A-7(a)(5), 6-12A-5 and 6-12A-7(d), Code of Alabama 1975, effective September 17, 2004.)

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